

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7960 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

IQBALKHAN JABBARKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

Mr U A Trivedi, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/12/96

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated 4.6.1996. It appears from the grounds of detention that two cases have been registered against the detenu for offences under the provisions of Indian Penal Code. The first case being CR No.11/94 for offences under sections 120(b) 121, 121(a), 123 and 188 of the IPC and also for offences under section 4 of the Explosives Act and

section 25(1)(a) of the Arms Act. The second case being CR No.6/96 for offences under sections 302, 301 and 114 of the IPC and section 25(1) of the Arms Act. It further appears from the statement of some of the witnesses that detenu was member of a very notorious and dangerous gang of one Abdul Latif and the said gang was holding huge and large scale of liquor and was also procuring and distributing deadly weapons and firm arms. It further appears that the detenu is involved along with other members of the Latif gang in CR No.6/96 which involved commission of offence under section 302 of the IPC which was a very gruesome murder. It is contended by Mr P S Champaneri, learned Advocate appearing for the petitioner that the order of detention is vitiated as the same suffers from non-application of mind by the detaining authority. It is submitted that the detaining authority has stated that the petitioner had filed application for releasing him on bail in CR No.11/94 and CR No.6/96 of Aslali Police Station and the court ordered to release the detenu on bail and inspite of the order of bail being passed by the Court of law, the detenu has chosen to remain in judicial custody and therefore, is likely to be released at any time and is likely to continue his offensive activities as a dangerous person. It is submitted that the said conclusion of the detaining authority is on account of total non-application of mind to the material on record. In CR No.6/96 registered at Aslali Police Station, the petitioner moved bail application being Misc.Criminal Application No.401/96 before the Court of Sessions, Ahmedabad (Rural) at Mirzapur. The said application was rejected by order dated 18.5.199. Thus, the apprehension of the detaining authority that the petitioner-detenu may be released on bail at any time is completely unfounded.

2. Learned APP is not in a position to dispute the aforesaid factual position. Thus, it is evident that the order of detention has been passed on non-reading or mis-reading of the material on record which also reflect that the detaining authority has not applied its mind to the material before him. This short ground alone is sufficient to vitiate the order of detention.

3. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated 4.6.1996 is quashed and set aside. The detenu shall be released forthwith, if not required in any other case. Rule made absolute accordingly.

Learned Advocate for the petitioner submits that the detenu is presently in the Sabarmati Central Prison,

Ahmedabad. In view of this, release order may be sent to Sabarmati Central Prison, Ahmedabad.

...